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MAY 14 1998

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

REVIEWING PANEL --- JURY SELECTION PLAN

NANCY DOHERTY, CLERK

By

*Y. Kelly*

The foregoing and attached order, amending the Jury Selection Plan for the Northern District of Texas, having been reviewed by the Reviewing Panel of this Circuit, is approved.

Entered for the Reviewing Panel at New Orleans, Louisiana, this 5th day of May, 1998.

*Gregory A. Nussel*

Gregory A. Nussel  
Secretary to the Judicial Council  
of the Fifth Circuit

The following judges comprised and acted as the Reviewing Panel:

(a) The Judicial Council of the Fifth Circuit:

Henry A. Politz  
Carolyn D. King  
Patrick E. Higginbotham  
Edith H. Jones  
John M. Duhé, Jr.  
Jacques L. Wiener, Jr.  
Rhesa H. Barksdale  
Emilio M. Garza  
Harold R. DeMoss, Jr.  
James L. Dennis  
Martin L.C. Feldman  
John V. Parker  
Richard T. Haik  
Neal B. Biggers, Jr.  
William H. Barbour, Jr.  
Jerry L. Buchmeyer  
George P. Kazen  
Paul N. Brown  
Walter S. Smith, Jr.

(b) United States District Judge:

*Jerry L. Buchmeyer*

Jerry L. Buchmeyer  
Chief United States District Judge  
Northern District of Texas

**FILED**

**MAY 14 1998**

NANCY DOHERTY, CLERK

By *Y. Kelly*  
Deputy

***United States District Court  
Northern District of Texas***



**JURY PLAN**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
MISCELLANEOUS ORDER NO. 5**

CURRENT PLAN FOR THE SELECTION OF GRAND AND PETIT  
JURORS IN ALL DIVISIONS OF THE NORTHERN DISTRICT OF TEXAS  
ADOPTED PURSUANT TO THE JURY SELECTION AND SERVICE  
ACT OF 1968, SECTION 1861, ET SEQ., TITLE 28, UNITED STATES CODE

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**I. PURPOSE**

It shall be the purpose of this plan to implement the policy of the United States, as expressed in section 1861, Title 28, United States Code, to the effect that:

- (A) All litigants in Federal Courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the District or Division wherein the Court convenes; and
- (B) All citizens shall have the opportunity to be considered for service on grand and petit juries in the District Courts of the United States; and
- (C) All citizens shall have an obligation to serve as jurors when summoned for that purpose; and it is further the purpose of this plan to implement the prohibition against discrimination contained in section 1862, Title 28, United States Code, which provides that no citizen shall be excluded from service as a grand or petit juror in the District Courts of the United States on account of race, color, religion, sex, national origin, or economic status.

## **II. APPLICABILITY OF PLAN**

This plan shall be applicable to each of the Divisions of this Court as established by section 124, Title 28, United States Code. A master and qualified jury wheel shall be maintained in each Division. The Divisions of Court and the places of holding Court therein are as follows:

- (A) The Dallas Division comprises the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall. Court for the Dallas Division shall be held at Dallas.
- (B) The Fort Worth Division comprises the counties of Comanche, Erath, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise. Court for the Fort Worth Division shall be held at Fort Worth.
- (C) The Abilene Division comprises the counties of Callahan, Eastland, Fisher, Haskell, Howard, Jones, Mitchell, Nolan, Shackelford, Stephens, Stonewall, Taylor, and Throckmorton. Court for the Abilene Division shall be held at Abilene.
- (D) The San Angelo Division comprises the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green. Court for the San Angelo Division shall be held at San Angelo.
- (E) The Amarillo Division comprises the counties of Armstrong, Brisco, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree,

Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

Court for the Amarillo Division shall be held at Amarillo.

(F) The Wichita Falls Division comprises the counties of Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Knox, Montague, Wichita, Wilbarger, and Young. Court for the Wichita Falls Division shall be held at Wichita Falls.

(G) The Lubbock Division comprises the counties of Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Kent, Lamb, Lubbock, Lynn, Motley, Scurry, Terry, and Yoakum. Court for the Lubbock Division shall be held at Lubbock.

### **III. STATUTORY PROVISIONS INCORPORATED HEREIN**

There is incorporated herein by reference all provisions of Chapter 121, sections 1861, et seq., Title 28, United States Code, and all amendments thereto, and other laws which may hereafter be enacted relating to juries and trial by jury.

### **IV. MANAGEMENT OF THE JURY SELECTION PROCESS**

Every act required or permitted by law or by this plan to be done in the management of the jury selection process may be performed by the Clerk or deputy clerks, or any other non-court personnel as authorized by the Court. To ensure the exercise of proper supervision and management over automated aspects of jury selection and its conformity with statutory requirements, non-court personnel operating a computer shall comply with the instructions for random selection of grand and petit jurors by electronic methods contained in this plan and

such additional written instructions as provided by the Court, and shall certify that the work performed has been completed pursuant to such instructions.

V. **MASTER JURY WHEEL**

- (A) **Master Wheel** The Court finds that the source from which the names of petit and grand jurors shall be selected, at random, shall be the General Election Voter Registration Lists from all counties within the relevant Division. The Court further finds that while such lists represent a fair cross-section of the community in this District, it is necessary to foster the statutory policy of Title 28, United States Code, section 1861 and section 1862 to supplement such lists in accordance with Title 28, United States Code, section 1862 (b)(2) with lists of the licensed drivers from all counties within each Division. The lists of licensed drivers will supplement the voter registration lists to the extent possible using records provided by the State of Texas as such records are prepared according to the state licensing cycle. The Court takes notice that in the event two or more source lists are used, one person's name may appear more than once. A system will be developed, before any selection procedures begin, to eliminate as reasonably as possible such duplications. The list or lists used to select names for the master jury wheel shall hereafter be referred to as the "source list." Accordingly, names of petit and grand jurors serving in this District shall be selected by randomized procedure from the aforementioned source lists.



- (B) Number of Names The total number of names for each master jury wheel shall be determined by the Chief Judge, but shall be not less than one-half of one percent of the total number of persons on the voter registration lists in each Division, and not less than 1,000. The number of names selected from each county shall be in the same ratio to the total number of names to be selected as the number of registered voters in that county bears to the total number of registered voters in the Division. Additional names may be placed in the master jury wheel from time to time as may be necessary and as determined and ordered by the Chief Judge.
- (C) Initial Selection of Names for the Master Wheel The Court finds that the initial selection of persons to be considered for service as petit and grand jurors from the source list shall be made at random in such a total number as may be deemed sufficient for a period of two years. For the purpose of calculating from the voter registration list the total number of registered voters within a respective Division within the District, the Clerk shall add together the totals contained from each county. The number taken as the total for each county may be based, at the Clerk's option, upon either a manual or a mechanized count of the names on the voter registration list. After first determining the total number of names needed for the master wheel and then the proportionate shares of names to be drawn from the source list of each particular county, the Clerk shall proceed, either manually or through a combination of manual and computer methods, to make the initial selection of names from the source list of each county.

- (D) Method and Manner of Random Selection The selection of names from complete source list databases in electronic media for the master jury wheel may be accomplished by a stratified purely randomized process through routines approved by the National Institute of Standards and Technology (NIST). Similarly, at the option of the Clerk and after consultation with the Court, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the master wheel for the purpose of determining qualification for jury service, and from the qualified wheel for summoning persons to serve as grand or petit jurors. Such random selections of names from the source list for inclusion in the master wheel by computer data personnel must ensure that each county within a jury Division is substantially proportionally represented in the master wheel in accordance with Title 28, United States Code, section 1863 (b)(3). The selections of the names from the source list, the master wheel, and the qualified wheel must also ensure that the mathematical odds of any single name being picked are substantially equal.
- (E) All names selected shall then be placed in the master jury wheel.

## **VI. QUALIFIED JURY WHEEL**

- (A) Drawing From Master Jury Wheel for Qualified Jury Wheel. From time to time, as directed by the Court, the Clerk or a District Judge shall publicly draw at random from the master jury wheel the names of as many persons as may be required for jury service by the Court. An alphabetical list of the names so

drawn may be prepared, but shall not be disclosed, except as required by sections 1867 and 1868 of Title 28, United States Code or on order of the Court.

- (B) Juror Qualification Forms The Clerk shall mail to every person whose name is drawn pursuant to subparagraph (A) hereinabove, such juror qualification form as may be prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, together with an appropriate letter of instructions directing the completion and return within ten days. Jurors shall be admonished on transmittal of the questionnaire that failure to complete and return this questionnaire form, or any wilful misrepresentation of any material fact requested by it for the purpose of avoiding or securing jury service, may subject him or her to criminal penalties.
- (C) Findings of the Court The Court, on its own initiative or upon recommendation of the Clerk, shall determine, solely on the basis of information provided on the juror qualification form and other competent evidence, whether a person is unqualified for, or exempt, or to be excused from jury service. The names of persons drawn from the master jury wheel who are determined to be qualified as jurors and not exempt or excused pursuant to this plan shall be placed in the qualified jury wheel by the Clerk.
- (D) A minimum of 300 names shall be maintained in the qualified jury wheel in each Division.

- (E) The qualified jury wheels shall be emptied and refilled initially pursuant to the procedure herein described, after the master jury wheels have been emptied and refilled, but not later than October 1, 1999, and thereafter between January 1 and October 1 of every second year.

## **VII. QUALIFICATIONS FOR JURY SERVICE**

Every person shall be deemed qualified to serve on grand and petit juries in this District, unless he or she:

- (A) is not a citizen of the United States, at least 18 years old, who has resided for a period of one year within the judicial District; or
- (B) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the jury qualification form; or
- (C) is unable to speak the English language; or
- (D) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or
- (E) has a charge pending against him or her for the commission of, or has been convicted in a State or Federal Court of record of, a crime punishable by imprisonment for more than one year and his or her civil rights have not been restored.

## **VIII. EXEMPTION FROM JURY SERVICE**

The Court finds that exemption of the following groups or occupational classes of

persons is in the public interest and would not be inconsistent with the provisions of sections 1861 and 1862 of Title 28, United States Code. Members of such groups are barred from jury service on the ground that they are exempt, and their names shall not be placed in the qualified jury wheel:

- (A) Members in active service in the Armed Forces of the United States; or
- (B) Members of the fire or police departments of any state, district, territory, possession, or subdivision thereof; or
- (C) Public officers in the executive, legislative, or judicial branches of the government of the United States, or any state, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties.

#### **IX. EXCUSES ON INDIVIDUAL REQUEST**

Pursuant to paragraphs (b)(5) and (b)(7) of section 1863, Title 28, United States Code, and by the adoption of this plan, it is hereby found that jury service by the following groups of persons and occupational classes of persons would entail undue hardship or extreme inconvenience to the members thereof and that the excuse from jury service of the members thereof on request would not be inconsistent with sections 1861 and 1862 of Title 28, United States Code:

- (A) Persons who are licensed to and who actively practice medicine in the State of Texas; or
- (B) Persons having active care of a child or children under ten years of age whose

service on a jury would require leaving the child or children without adequate supervision; or

- (C) Persons essential to the care of aged or infirm persons; or
- (D) Persons over 70 years of age; or
- (E) Persons who are full-time students of a public or private secondary school or an accredited college or university.

**X. GRAND JURIES FOR THE DISTRICT AND THE DIVISIONS**

Grand juries may be drawn for and from a single Division, a combination of Divisions, or the entire District.

- (A) Grand juries drawn for and from a single Division may indict for any offense triable in that Division or any Division of the District. Grand juries drawn for and from a single Division shall be drawn from the qualified jury wheel in that Division.
- (B) Grand juries drawn for and from any combination of Divisions in the District may indict for any offense triable in any Division of the District. Grand juries drawn for and from a combination of Divisions shall be drawn from the qualified jury wheel in each Division in the combination in essentially the same proportion that the number of names on the voter registration lists in each Division bears to the total number of names on all of the voter registration lists of the combined Divisions.
- (C) Grand juries drawn for and from the entire District may indict for any offense

triable in any Division of the District. Grand juries drawn for and from the entire District shall be drawn from each divisional qualified jury wheel in the District in essentially the same proportion that the number of names on the voter registration lists in each Division bears to the total number of names on all of the voter registration lists of the combined Divisions.

#### **XI. SUMMONING OF JURORS**

When the Court orders a grand or petit jury to be drawn, the Clerk shall publicly draw, at random, from the qualified jury wheel the names of persons in the number required for grand and petit jury service and the Clerk shall issue summons for such persons. Each person drawn for jury service may be served personally, or by registered or certified mail, or by first-class mail in accordance with section 1866(b), Title 28, United States Code, addressed to such person at his or her usual residence or business. If service is made personally, the summons shall be delivered by the Clerk or a duly designated deputy to the marshal who shall make such service. If service is made by registered or certified mail, the summons may be served by the Clerk or a duly designated deputy who shall make affidavit of service and shall file with such affidavit the addressee's receipt for the registered or certified summons. If such service is made by the marshal, he/she shall attach to his/her return the addressee's receipt for the registered or certified mail. Service may be made through regular first-class mail channels which requires no receipt or affidavit. Thereafter, prospective jurors shall be sent to the courtroom for selection to grand and petit jury panels using lists of names randomly drawn

from the names of those who have been summoned. The names of persons drawn from the qualified wheel and the lists of persons assigned to grand and petit jury panels shall not be disclosed by the Clerk except by order of the Court.

## **XII. FURTHER EXCUSES AND EXCLUSIONS AFTER SUMMONS**

Except as provided in paragraphs VII, VIII, and IX hereinabove, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors;

PROVIDED, that any person summoned for jury service may be:

- (A) Excused by the Court, or by the Clerk under supervision of the Court, upon a showing of undue hardship or extreme inconvenience, for such period as the Court deems necessary, at the conclusion of which such person(s) shall be summoned again for jury service.
- (B) Excluded by the Court on the ground that such person may be unable to render impartial jury service or that his or her service as a juror would be likely to disrupt the proceedings.
- (C) Excluded upon the peremptory challenge as provided by law.
- (D) Excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown.
- (E) Excluded upon determination by the Court that his or her service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations.
- (F) Excused where there is an excess of jurors present who are not empaneled (e.g.,



grand jury) and their presence is required for only one day. The Court shall, in its discretion, upon excusing the excess jurors, inform them that their names will be placed back in the petit jury pool subject to subsequent random selection.

No person shall be excluded under clause (E) above unless the Judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with sections 1861 and 1862 of Title 28, United States Code. The number of persons excluded under clause (E) above shall not exceed one percent of the number of persons who returned executed juror qualification forms during the period, specified in the plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (E) above, together with detailed explanations for the exclusions, shall be forwarded immediately to the Judicial Council of the Circuit, which shall have power to make any appropriate order, prospective or retroactive, to redress any misapplication of clause (E); but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provision of Title 28, United States Code.

Any person excluded from a particular jury under clause (B), (C), or (D) above shall be eligible to sit on another jury if the basis for his or her initial exclusion would not be relevant to his or her ability to serve on such other jury.

### **XIII. NOTATION OF CLERK**

Whenever a person is disqualified, excused, exempt, or excluded from jury service, the Clerk shall make a notation on the juror's record or on his/her juror qualification form.

#### **XIV. LIMITATION ON JURY SERVICE**

In any two-year period, no person shall be required to:

- (A) serve or attend Court for prospective service as a petit juror for a total of more than 30 days, except when necessary to complete service in a particular case; or
- (B) serve on more than one grand jury; or
- (C) serve as both grand and petit juror.

#### **XV. SELECTION OF JURORS IN CASES OF UNANTICIPATED SHORTAGE**

When there is an unanticipated shortage of available petit jurors drawn from any qualified jury wheel, the Court may require the marshal to summon a sufficient number of additional petit jurors selected at random from the qualified jury wheel of the Division in which Court is held.

#### **XVI. FAILURE TO APPEAR AS SUMMONED**

Any person summoned for jury service who fails to appear as directed shall be ordered by the Court to appear forthwith and show cause for his/her failure to comply with the summons. Any person who fails to show good cause for non-compliance with a summons may be fined not more than \$100.00 or imprisoned not more than three days, or both.

## **XVII. CHALLENGING COMPLIANCE WITH SELECTION PROCEDURE**

In civil cases and in criminal cases, the exclusive method of challenging any jury on the ground that such jury was not selected in conformity with the provisions of Chapter 121 of Title 28, United States Code, shall be that provided by any existing statute and rule of criminal and civil procedure, including but not limited to section 1867, Title 28, United States Code. Requests to inspect, reproduce, and copy records or papers used by the Clerk in the jury selection process must be submitted in writing to the Clerk. Prior to emptying the master jury wheels, papers and records compiled and maintained by the Clerk pursuant to this plan shall not be disclosed except by order of the Court.

## **XVIII. EMPTYING AND REFILLING OF MASTER JURY WHEELS**

The master jury wheels shall be emptied and refilled not later than September 1, 1999, with names taken from the voter registration lists for the 1998 general election and lists of licensed drivers provided by the State of Texas. Thereafter, master jury wheels shall be emptied and refilled every two years between January 1 and September 1, with names taken from the most recent voter registration and supplemental licensed driver lists.

## **XIX. DISCLOSURE OF RECORDS**

Disclosure of the contents of jury records and papers used by the Clerk in connection with the jury selection process is not permitted except as provided by section 1867(f) of Title 28, United States Code, or on order of the Court.

The Court may order any list of juror names to be kept confidential in a case or cases when the interest of justice so requires. The names of persons chosen to serve as grand jurors in this District shall remain confidential in the interest of justice unless otherwise ordered by the Court.

**XX. MAINTENANCE OF RECORDS**

After any master jury wheel is emptied and refilled as provided in this plan and after all persons selected to serve as jurors prior to emptying of the master jury wheel have completed such service, all papers and records compiled and maintained by the Clerk prior to emptying of the master jury wheel shall be preserved in the custody of the Clerk for four years, or for such longer period as may be ordered by the Court, and shall be available for public inspection for the purpose of determining the validity of the selection of any jury. Requests to inspect or obtain copies of jury records after the master jury wheel has been emptied must be submitted in writing to the Clerk.

**XXI. SUPERVISION**

Responsibility of supervision and control of the operation of this plan lies with the Chief Judge of the District.

**XXII. DEFINITIONS**

- (A) Use of the word "Court" in this plan shall contemplate the Chief Judge of this District, or any Judge assigned to a particular Division by order duly filed in

such Division.

- (B) The phrase "Chief Judge of the District" whenever used in this plan, shall mean the Chief Judge of the District, or in his or her absence, disability, or inability to act, the active District Court Judge who is present in the District and has been in service the greatest length of time. Whenever the Jury Selection and Service Act of 1968 specifies or authorizes the plan to designate a District Court Judge to act instead of the Chief Judge, the above definition shall apply and such active District Court Judge above-mentioned is hereby designated to act.
- (C) "Clerk" and "Clerk of the Court" shall mean the Clerk of the United States District Court for the Northern District of Texas, any deputy clerk authorized by the Clerk of said Court, or any other non-court personnel as authorized by the Court to assist the Clerk in the performance of functions under this plan.
- (D) "Division" shall mean one of the statutory Divisions in the Northern District of Texas as provided in section 124, Title 28, United States Code.
- (E) "Voter registration lists" shall mean the official records maintained by state or local election officials of persons registered to vote in either the most recent state or the most recent federal general election. The term shall also include the list of eligible voters maintained by any federal examiner pursuant to the Voting Rights of 1965, where the names on such list have not been included on the official registration lists or other official lists maintained by the appropriate state or local officials.
- (F) "Jury wheel" shall include any device or system similar in purpose or function,

such as a properly programmed electronic data processing system or device, or any documents similar in purpose and function to a jury wheel.

- (G) "Juror qualification form" shall mean a form proscribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, in accordance with section 1869(h) of Title 28, United States Code.
- (H) "Panel" shall mean the reviewing panel consisting of the members of the Judicial Council of the Fifth Circuit and the Chief Judge of the United States District Court for the Northern District of Texas.
- (I) "Lists of licensed drivers" shall mean official lists of licensed drivers and state identification card holders maintained by appropriate officials of the State of Texas.
- (J) "Source lists" shall mean voter registration lists, supplemented with lists of licensed drivers obtained from the State of Texas.
- (K) "Publicly draw" means to draw by electronic means in a place open to the public at large under such supervision of the Clerk as the Judicial Conference of the United States shall by regulation require. The place of drawing may be an electronic data processing center located in or out of the District after reasonable notice is given in the District.

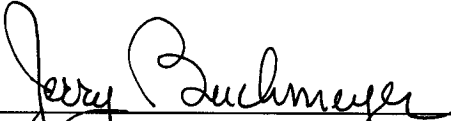
**XXIII.        REPORTING STATEMENT**

This plan is based on the conclusion and judgment that the policy, purpose and intent of the Jury Selection and Service Act of 1968 will be fully accomplished and implemented by the use of voter registration lists, as supplemented by the inclusion of subsequent registrants to the latest practicable date and lists of licensed drivers, as the source of an at-random selection of prospective grand and petit jurors who represent a fair cross section of the community. This determination is supported by all the information this Court has been able to obtain after diligent effort on its part and after full consultation with the Fifth Circuit Jury Working Committee and the Judicial Council of the Fifth Circuit. As required by the Judicial Conference of the United States, a report will be made within six months after each periodic refilling of the master wheel, on forms approved by the Judicial Conference, giving general data relating to the master wheel, the time and manner of name selection, an analysis of the race, ethnicity and sex of prospective jurors based on returns from a statistically reliable sample of persons chosen at random from the master jury wheel to whom juror qualification forms have been sent, and an analysis by race, ethnicity, and sex of all persons who have actually been qualified for jury service during the period covered by the report.


**XXIV. EFFECTIVE DATE**

Provisions of the plan now in effect are superseded and this plan as amended shall take effect when approved by a reviewing panel of the Judicial Council of the United States Court of Appeals for the Fifth Circuit, as provided in section 1863, Title 28, United States Code.


Signed this 1 day of MAY, 1998.

  
JERRY BUCHMEYER, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

This amended plan approved by the Judicial Council of the Fifth Circuit this 5<sup>TH</sup> day of MAY, 1998.

  
GREGORY A. NUSSEL  
SECRETARY OF THE COUNCIL

Filed this 14<sup>th</sup> day of May, 1998.

  
NANCY DOHERTY, CLERK OF COURT  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS